Wong Pang Fing v Public Prosecutor

HIGH COURT (KUCHING) — CRIMINAL APPEAL NO 41-15-95-III
ELIZABETH CHAPMAN JC
23 AUGUST 1996

Criminal Procedure *— Jurisdiction of court — Magistrate's court — Whether magistrate had jurisdiction to hear cases committed outside its own jurisdiction — Criminal Procedure Code (FMS Cap 6) ss 2, 9(a), 10(1), 121 & 122 — Subordinate Courts Act 1948 s 76(2)*

The appellant was convicted of an offence in the Magistrate's Court at Kuching. The offence was committed at 17th Mile Kuching/Bau Road, Bau, in the State of Sarawak. On appeal, the appellant submitted that the trial magistrate at Kuching had the jurisdiction to hear the case since the offence was committed in the District of Bau which had its own courthouse.

Held, allowing the appeal:

The offence took place at the 17th Mile Kuching/Bau Road and the 17th Mile is well within the Bau administrative area. Under the schedule to the Administrative Areas Order GN 629/49, the District of Bau and Kuching are two separate administrative areas of the First Division and the 17th Mile Kuching/Bau Road is well within the Bau administrative area. The trial magistrate who was a resident magistrate in Kuching clearly had no jurisdiction to hear this case at the magistrate's court in Kuching as he had no jurisdiction over the District of Bau (see p 153B–C, E).

[Bahasa Malaysia summary

Perayu disabitkan atas kesalahan di Mahkamah Majistret di Kuching. Kesalahan dilakukan di Batu 17 Jalan Kuching/Bau, Bau di Negeri Sarawak. Atas rayuan, perayu berhujah bahawa majistret perbicaraan di Kuching mempunyai bidang kuasa untuk mendengar kes itu oleh kerana kesalahan dilakukan di Daerah Bau yang mempunyai bangunan mahkamah sendiri.

Diputuskan, membenarkan rayuan:

Kesalahan dilakukan di Batu 17 Jalan Kuching/Bau dan Batu 17 adalah dalam rangkuman kawasan pentadbiran Bau. Di bawah jadual kepada Perintah Pentadbiran Kawasan GN 629/49, Daerah Bau dan Kuching adalah dua kawasan pentadbiran Bahagian Satu yang berasingan dan Batu 17 Jalan Kuching/Bau adalah dalam rangkuman kawasan pentadbiran Bau. Majistret perbicaraan di Kuching jelas tidak mempunyai bidang kuasa untuk mendengar kes ini di mahkamah majistret di Kuching sebab beliau tidak mempunyai bidang kuasa atas Daerah Bau (lihat ms 153B–C, E).]

Notes

For cases on the jurisdiction of the magistrate's court, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1536–1572.

Legislation referred to

Administrative Areas Order GN 629/49
Administrative Areas Ordinance (Sarawak Cap 4)
Commercial Vehicles Licensing Board Act 1987 s 33
Criminal Procedure Code (FMS Cap 6) ss 2, 9(a), 10(1), 121, 122
Subordinate Courts Act 1948 s 76(2)

John Shek (*John Shek & Co*) for the appellant.
Awang Armadajaya Awang Mahmud (Deputy Public Prosecutor) for the respondent.

Elizabeth Chapman JC: The appellant was charged under s 33 of the Commercial Vehicles Licensing Board Act 1987 in the Magistrates' Court at Kuching. To this charge, he pleaded guilty and was convicted on his own plea and a fine of RM500 in default one month's imprisonment was imposed. It was further ordered that his motor van be forfeited. On appeal, learned counsel for the appellant raised an interesting point, that the trial magistrate had no jurisdiction to hear the case as the offence was committed outside its jurisdiction.

The offence here was committed at 17th Mile Kuching/Bau Road, Bau, in the State of Sarawak. The issue before this court is whether the trial magistrate at Kuching had the jurisdiction to hear the case since the offence was committed in the District of Bau which had its own courthouse.

It is pertinent to note that s 9(a) of the Criminal Procedure Code (FMS Cap 6) ('the Code') stipulates that:

> Subject to the provisions of this Code every Magistrate shall have cognisance of and power and authority to —
>
> (a) hear, try, determine and dispose of in a summary way prosecutions for offenses committed wholly or in part within the local jurisdiction of such Magistrate and cognisable by such magistrates; ... .

The 'local limits of the jurisdiction' of the court of a magistrate means the limits of the ordinary administrative district in which the courthouse is situated: see s 2 of the Code.

Furthermore, the proviso under s 10(1) of the Code states that:

> Nothing herein contained shall be deemed to authorise any Magistrate's Court to take cognisance of an offence alleged to have been committed beyond its ordinary local jurisdiction unless such Court be the nearest Court to the place where the offence is alleged to have been committed.

Section 121 of the Code stipulates that every offence shall ordinarily be enquired into and tried by a court within the local limits of whose jurisdiction it was committed. In the First Division of Sarawak, a magistrate's court is constituted in the following places: Kuching, Bau, Lundu, Serian and

A Simunjan (see PU (B) 261 and under s 76(2) of the Subordinate Courts Act 1948, it is provided that a magistrate's court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section.

In this instant case, the offence took place at the 17th Mile Kuching/
B Bau Road and the 17th Mile is well within the Bau administrative area. The trial magistrate was, in this case, a resident magistrate in Kuching. The administrative district is constituted by the Administrative Areas Order GN 629/49 (as amended by Sarawak LN 54/83) made under the Administrative Areas Ordinance (Sarawak Cap 4). Under the schedule to that order, Bau District and Kuching are two separate administrative areas
C of the First Division and the 17th Mile Kuching/Bau Road is well within the Bau administrative area.

Section 121 of the Criminal Procedure Code further provides that every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed and s 122 provides
D that when a person is accused of the commission of any offence by reason of anything which has been done and of any consequences which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

E The trial magistrate in this case was a resident magistrate in Kuching and clearly had no jurisdiction to hear this case at the magistrate's court in Kuching as he had no jurisdiction over the District of Bau.

For the above reason, the appeal is allowed. Sentence and conviction are quashed and further order that this case be tried at the Bau court.

F *Appeal allowed.*

Reported by Loo Lai Mee

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